

VOLUNTARY SELF DISCLOSURE AGREEMENT

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Form AP DE-2

State of Delaware
May 1, 2006

Delaware Division of Revenue
Bureau of Abandoned Property
820 North French Street, 8th Fl
Wilmington, De 19801

VOLUNTARY SELF DISCLOSURE AGREEMENT

This Agreement is entered into between the State of Delaware, Delaware State Escheator ("STATE"), acting by its undersigned duly authorized representative, and _____ ("HOLDER"), a corporation incorporated under the laws of the State of _____, acting by its duly authorized officer:

WHEREAS, the HOLDER, is not presently in compliance with the Delaware Abandoned Property Law, Chapter 11 of Title 12 of the Delaware Code, ("Abandoned Property Law"); and

WHEREAS, the HOLDER voluntarily came forward on _____, and entered into a Disclosure and Notice Agreement evidencing a good faith desire to comply with the Delaware Abandoned Property Law; and

WHEREAS, the HOLDER had not been contacted by the STATE or any of the STATE'S auditor representatives on behalf of the STATE in order to schedule or conduct an examination of the books and records of the HOLDER before the Holder entered into a Disclosure and Notice Agreement on _____; and

WHEREAS, the HOLDER desires to resolve all claims which the STATE may assert and the STATE desires to induce the Holder to voluntarily comply with the Delaware Abandoned Property Law:

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, the parties agree as follows:

1. The HOLDER agrees to file reports and to pay and deliver all abandoned or unclaimed property for the report year 1996 through report year _____.
2. The HOLDER agrees to pay and deliver to the STATE upon execution hereof the property identified and fully described in the report to be provided (Exhibit A) and incorporated herein by reference. This report shall constitute the HOLDER'S reports required by section 1199 of the Abandoned Property Law for the periods set out in paragraph No.1 above.
3. The Holder represents that except as otherwise specifically made known to the State and as noted in an addendum to this agreement, the Holder is entering into this agreement intending to fully comply with the Delaware Abandoned Property Law and the rules of priority set forth in the decisions of the United States Supreme Court in the cases of Texas v. New Jersey and

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Delaware v. New York. Holder also represents that the payment and delivery of property pursuant to this agreement is made in good faith compliance with the Delaware Abandoned Property Law, including but not limited to section 1203 of the Law.

4. The STATE releases the HOLDER from all claims, demands, interest, penalties, actions or causes of action the STATE may have for the reporting years set out in paragraph No. 1 above and for all preceding years, subject only to the conditions set out in paragraph No. 8 below. Upon payment of the abandoned or unclaimed property the STATE agrees to indemnify the HOLDER pursuant to the terms of section 1203, Chapter 11 of Title 12 of the Delaware Code.

5. The STATE releases the HOLDER from any further reporting requirements of the Delaware Abandoned Property Law for the abandoned or unclaimed property identified, paid and delivered pursuant to this agreement, for the reporting years covered by paragraph No. 1 of this agreement, and for all preceding reporting years. The Holder agrees to file and report abandoned property annually going forward as required by the Abandoned Property Law.

6. The HOLDER, if applicable, has disclosed to the STATE that estimation techniques were used to determine the amount of abandoned or unclaimed property identified in paragraph No. 1 for those periods where the HOLDER'S records either do not exist, or are inadequate to determine the exact amount of abandoned or unclaimed property payable to the STATE. The STATE'S entry into this agreement constitutes the STATE'S assent to the assumptions and methodology employed by the HOLDER to estimate the amount of abandoned or unclaimed property. The HOLDER swears that no estimation techniques were used to infer, create, or otherwise identify addresses for persons appearing to be owners of abandoned or unclaimed property where the HOLDER'S books and records do not in fact contain the addresses of the persons appearing to be the owners of the abandoned or unclaimed property.

7. The STATE will maintain the confidentiality of information voluntarily disclosed and shall only disclose such information as provided in Section 1141, Chapter 11 of Title 12 of the Delaware Code, or as otherwise required by law.

8. The STATE recognizes that the HOLDER has come forward on a voluntary basis and hereby has entered into compliance with the Escheat Law and will take the HOLDER'S actions into consideration in any decision whether to audit the HOLDER'S books and records. Furthermore, if the STATE has not notified the HOLDER within eighteen months from the date that a Holder has paid over property under a VDA of its intent to audit the HOLDER'S books and records, the STATE waives its right to audit the HOLDER for the reporting years covered by paragraph No. 1 and for all preceding periods. An audit of the HOLDER'S books and records shall commence within six months of the HOLDER'S receipt of the STATE'S notification unless commencement of the audit is delayed by the HOLDER or the parties agree to extend the time within which the audit may be conducted. If the STATE does examine the books and records of the HOLDER, as is its right, and the examination discloses that the HOLDER has not acted in good faith or has materially failed to disclose the full amount of abandoned or unclaimed property held by the HOLDER and payable to the STATE for the reporting years set out in paragraph No. 1, then paragraphs 4 and 5 of the agreement shall be null and void and the STATE may, in its sole discretion, expand the scope of the

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audit to cover years prior to those covered by this agreement. In this event, the State shall require the HOLDER to pay over the additional abandoned or unclaimed property uncovered by the examination of the years covered by this agreement as well as any abandoned or unclaimed property due and owing for reporting years preceding those years set out in paragraph No.1. The STATE may also assess interest and penalties pursuant to section 1159 of the Abandoned Property Law on all abandoned or unclaimed property due for all reporting years. In any proceeding brought under this clause to enforce the payment of additional abandoned property this agreement shall not be admissible against a Holder as evidence that a particular item, kind or type of property constitutes abandoned property within the meaning of the Abandoned Property Law.

“Good Faith” requires, inter alia, that the HOLDER disclose to the STATE all determinations made in connection with this voluntary disclosure agreement that a particular item, kind or type of property is not abandoned or unclaimed property under the Delaware Abandoned Property Law, and which result in a reduction in the amount of property reported or in the omission of a particular kind or type of property from disclosure.

Reliance on an independent third party to process the HOLDER’S books and records and to determine the amount of abandoned or unclaimed property to be reported and paid over under this agreement does not by itself alone, without more, constitute “good faith.”

An amount attributable to owner/address unknown gift certificates, gift cards, stored value cards and the like is included in the amount of abandoned or unclaimed property disclosed in this agreement. The Holder and the State recognize that the amount attributable thereto is an estimate based upon several imprecise factors. The Holder in exchange for the concessions made by the State in valuing this portion of the abandoned or unclaimed property, including the waiver of interest and penalty, agrees to make no claim for the return of this property unless the Holder can establish that: 1) it possesses the name and address of the owner in the Holder’s books and records, or 2) it has redeemed a certificate previously reported as abandoned property.

Date: _____

Date: _____

Mark Udinski
Abandoned Property Audit Manager

(Title)

I, _____, _____, declare under
(Title)

penalties of perjury that I have examined this agreement and the accompanying schedules and exhibits and swear that they are true and correct to the best of my knowledge information and belief.